

REMARKS

Claims 55-91 remain in this application. Claims 55 and 73 are amended. No new matter has been added. Applicants respectfully request reconsideration and review of the application in view of the following remarks.

At the outset, Applicants acknowledge with appreciation the indication of allowable subject matter in Claims 55-91.

The Examiner has rejected Claims 55-69, 73-79 and 81-91 under 35 U.S.C. § 112, second paragraph, as incomplete for omitting essential elements. Specifically, the Examiner has identified the following "omitted elements" of the claims:

a) Claims 55-69: "sending the area parameter and encrypted digital information from the first information processing device to the second information processing device;"

b) Claims 73-79, 81: "appending the area parameter to the encrypted digital information and communicating the encrypted digital information to a receiver;"

c) Claims 82-91: "receiving the area parameter appended to the encrypted digital information."

The Examiner further states that these "omitted elements" of the claims are "critical".

Applicants respectfully disagree with this characterization. While the recited "omitted elements" may be characterized as the preferred embodiment of the invention, there is no statement in the specification to the effect that such limitations are "critical." According to the MPEP § 2164.08(c), "[f]eatures which are merely preferred are not to be considered critical." The MPEP further recites:

Limiting an applicant to the preferred materials in the absence of limiting prior art would not serve the constitutional purpose of promoting the progress in the useful arts. Therefore, an enablement rejection based on the grounds that a disclosed critical limitation is missing from a claim should be made only when the language of the specification makes it clear that the limitation is critical for the invention to function as intended.

Id. In the absence of any express statement in the specification identifying the “omitted elements” as critical, this ground of rejection is improper and should be withdrawn.

Nevertheless, in the interest of advancing this application to allowance, and without acquiescing as to the “critical” nature of such limitations, Applicants have amended Claims 55 and 73 to include certain additional limitations defining the communication of the area parameter and encrypted digital information. Specifically, Claim 55 is amended to recite that the first information processing device performs the function of “sending the area parameter and the encrypted digital information.” Likewise, Claim 73 is amended to recite the function of “sending the area parameter and the encrypted digital information to a recipient device.” Applicants note that independent Claim 82 already includes limitations of “receiving digital information that has been encrypted” and “receiving the area parameter,” and so further limitations are deemed unnecessary.

The additional limitations proposed by the Examiner regarding “appending the area parameter to the encrypted digital information” are considered unnecessarily limiting and not mandated by the specification. It should be appreciated that alternative ways of providing the recipient with the area parameter would be well understood by persons skilled in the art, such as communicating the area parameter and encrypted digital information in separate communication transactions or retrieving the area parameter from another source. Insofar as the Examiner has already acknowledged that the subject matter of Claims 55-91 are not covered by the prior art of record, Applicants are entitled to claims broad enough to encompass such alternatives.

The Examiner provisionally rejected certain claims of this application under the judicially created doctrine of obviousness-type double patenting as unpatentable over copending applications Serial No. 09/758,637 and 09/992,378. Since neither of the copending applications are allowed at the present time, no further response to the provisional rejections is deemed necessary. In the event that one of the referenced applications becomes allowed and issued prior to the present application, Applicants will

Serial No. 09/699,832
August 17, 2005
Page 12

submit a Terminal Disclaimer to obviate this ground of rejection.

In view of the foregoing, Applicants respectfully submit that Claims 55-91 are in condition for allowance. Reconsideration and withdrawal of the rejections is respectfully requested, and a timely Notice of Allowability is solicited. If it would be helpful to placing this application in condition for allowance, the Applicants encourage the Examiner to contact the undersigned counsel and conduct a telephonic interview.

While the Applicants believe that no fees are due in connection with the filing of this paper, the Commissioner is authorized to charge any shortage in the fees, including extension of time fees, to Deposit Account No. 50-0639.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'B. Berliner', written over a horizontal line.

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